

Regular Session, 2011

HOUSE BILL NO. 502

BY REPRESENTATIVE PONTI

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

WORKERS COMPENSATION: To provide relative to workers' compensation

1 AN ACT

2 To amend and reenact R.S. 23:1226(A), (B), (D), and (E) and 1377(A) and to enact R.S.
3 23:1227 and 1377(G), relative to workers compensation; to provide with respect to
4 vocational rehabilitation; to provide for functional capacity evaluation testing; to
5 provide with respect to the Second Injury Fund; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 23:1226(A), (B), (D), and (E) and 1377(A) are hereby amended and
8 reenacted and R.S. 23:1227 and 1377(G) are hereby enacted to read as follows:

9 §1226. Rehabilitation of injured employees

10 A. When an employee has suffered an injury covered by this Chapter which
11 precludes the employee from earning wages equal to wages earned prior to the
12 injury, the employee shall be entitled to prompt rehabilitation services. Early referral
13 is critical to the vocational rehabilitation process and shall be initiated as soon as
14 possible. Vocational rehabilitation services shall be provided by a licensed
15 professional vocational rehabilitation counselor, and all such services provided shall
16 be compliant with the Code of Professional Ethics for Licensed Rehabilitation
17 Counselors as established by R.S. 37:3441 et seq.

18 B.(1) The goal of rehabilitation services is to return a disabled worker to
19 work, with a minimum of retraining, as soon as possible after an injury occurs. ~~The~~
20 If the employer or insurer determines that the employee is unable to earn wages

1 equal to wages earned prior to the injury, the first appropriate option among the
2 following must be chosen for the worker:

3 (a) Return to the same position.

4 (b) Return to a modified position.

5 (c) Return to a related occupation suited to the claimant's education and
6 marketable skills.

7 (d) On-the-job training.

8 (e) Short-term retraining program (~~less than twenty-six weeks~~) of less than
9 fifty-two weeks.

10 (f) Long-term retraining program (~~more than twenty-six weeks but not more~~
11 ~~than one year~~) of at least fifty-two weeks and not more than two years.

12 (g) Self-employment.

13 (2) Whenever possible, employment in a worker's local job pool must be
14 considered and selected prior to consideration of employment in a worker's statewide
15 job pool.

16 (3)(a) The employer shall be responsible for the selection of a licensed
17 professional vocational rehabilitation counselor to evaluate and assist the employee
18 in his job placement or vocational training. It shall be the responsibility of the
19 licensed professional vocational rehabilitation counselor to meet with the employee
20 as soon as possible after vocational services are requested and to develop an initial
21 rehabilitation plan. Such rehabilitation plan shall be developed with the employee
22 and shall contain the following:

23 (1) The agreed upon vocational goal of the rehabilitation service.

24 (2) The actual plan to obtain that goal.

25 (3) The signature of both parties establishing that the plan was approved.

26 (b) Should the employer refuse to provide these services, or a dispute arises
27 concerning the work of the vocational counselor, the employee may file a claim with
28 the office to review the need for such services or the quality of services being

1 provided. The procedure for hearing such claims shall be expedited as provided in
2 R.S. 23:1124.

3 ~~(b)~~ (c) An employee shall have no right of action against a vocational
4 counselor for tort damages related to the performance of vocational services unless
5 and until he has exhausted the administrative remedy provided for in Subparagraph
6 ~~(a)~~ (b) of this Paragraph. The running of prescription shall be suspended during the
7 pendency of the administrative proceedings provided for in this Paragraph.

8 ~~(c)~~ (d) The expedited procedure shall also be made available to the employer
9 to require the employee's cooperation in the rehabilitation process. Refusal to accept
10 rehabilitation as deemed necessary by the worker's compensation judge shall result
11 in a fifty percent reduction in weekly compensation, including supplemental earnings
12 benefits pursuant to R.S. 23:1221(3), for each week of the period of refusal.

13 * * *

14 D. Prior to the workers' compensation judge adjudicating an injured
15 employee to be permanently and totally disabled, the workers' compensation judge
16 shall determine whether there is reasonable probability that, with appropriate training
17 or education, the injured employee may be rehabilitated to the extent that such
18 employee can achieve suitable gainful employment and whether it is in the best
19 interest of such individual to undertake such training or education. If the workers'
20 compensation judge determines that such training or education is appropriate, the
21 employer or insurer shall be responsible for the costs of the training or education.

22 E. When it appears that a retraining program is necessary and desirable to
23 restore the injured employee to suitable gainful employment, the employee shall be
24 entitled to a reasonable and proper retraining program for ~~a period not to exceed~~
25 ~~twenty-six weeks, which period may be extended for an additional period not to~~
26 ~~exceed twenty-six additional weeks if such extended period is determined to be~~
27 ~~necessary and proper by the workers' compensation judge.~~ an appropriate period of
28 time pursuant to Subparagraphs (B)(1)(a) and (b) of this Section. However, no
29 employer or insurer shall be precluded from continuing such retraining beyond such

1 period on a voluntary basis. An injured employee must request and begin retraining
2 within two years from the date of the termination of temporary total disability as
3 determined by the treating physician. If a retraining program requires residence at
4 or near the facility or institution and away from the employee's customary residence,
5 reasonable cost of board, lodging, or travel shall be borne by the employer or insurer.
6 A retraining program shall be performed at facilities within the state when such
7 facilities are available.

8 * * *

9 §1227. Functional capacity evaluations

10 A. For the purposes of this Section, a functional capacity evaluation means
11 a detailed evaluation performed by a qualified examiner to objectively measure an
12 injured worker's level of function within the context of the demands of competitive
13 employment. Measurements of function from a functional capacity evaluation shall
14 be used to determine an injured worker's ability to return safely to full- or part-time
15 employment with or without modification.

16 B.(1) A qualified functional capacity evaluation examiner shall be a licensed
17 physical therapist or occupational therapist who meets all requirements to practice
18 in Louisiana and has completed:

19 (a) A minimum of two years of clinical experience evaluating and treating
20 adult patients in an outpatient setting.

21 (b) A nationally recognized functional capacity evaluation course that has
22 been approved for continuing education by the Louisiana Physical Therapy Board,
23 the Occupational Therapy Advisory Committee, the State Board of Medical
24 Advisors, or the Louisiana State Board of Medical Examiners at the time the course
25 was completed.

26 (c) A minimum of eight hours of continuing education every two years in
27 work-related courses such as ergonomics, job assessments, functional capacity
28 evaluations, work conditioning, or work hardening which are approved by the

1 Louisiana Physical Therapy Board, the Occupational Therapy Advisory Committee,
2 or the State Board of Medical Advisors as being related and appropriate.

3 (2) The authorized examiner shall provide a proof of compliance with
4 Subparagraph (1) of this Paragraph to the employer or insurer.

5 C.(1) The authorized examiner shall review pertinent medical records, be
6 cognizant of any physical limitations, perform the physical examination, administer
7 the functional assessment, interpret all relevant data, and produce a functional
8 capacity evaluation report. The report shall be a standardized functional capacity
9 summary form, as promulgated by the Office of Workers' Compensation
10 Administration and shall identify the type of functional capacity evaluation
11 performed. An approved functional capacity evaluation shall be evidenced by the
12 scientific rigor of reliability and validity studies and shall include a functional
13 analysis of job tasks, history and physical examination, and job-specific functional
14 capacity tests.

15 (2) Testing shall be conducted in two consecutive days unless the examiner
16 determines that it is necessary to reschedule the second day of testing to the
17 following work day. If the second day of testing is not completed within forty-eight
18 hours of the initial visit, then the treating physician and claims adjustor shall be
19 notified and the entire two-day functional capacity evaluation shall be rescheduled.

20 (3) The employer, insurer, or third-party administrator shall authorize a
21 minimum of twelve hours for the functional capacity evaluation. The examiner may
22 issue additional hours upon request of the employer, insurer, or third-party
23 administrator when necessary to perform an accurate functional capacity evaluation
24 for the injured worker.

25 (4) When an injured worker attempts to resume employment with his
26 previous employer and he is subject to permanent restrictions or he is returning to
27 a modified employment position, a functional job description shall be supplied
28 before the functional capacity evaluation is performed.

(5) Nothing in this Section shall prohibit the use of early return-to-work functional capacity evaluations involving efforts to identify the job tasks an injured worker can perform safely when modified temporarily to return to work with his former employer.

D. Once the examiner completes the functional capacity evaluation and the report, he shall forward the report to the treating physician for his review. The treating physician shall approve the functional capacity evaluation findings within fifteen days or assign additional restrictions to be included in the final functional capacity evaluation report. If the treating physician does not respond within fifteen days, then the findings of the examiner are presumed to be accurate and appropriate for the injured worker. The final functional capacity evaluation report shall then be used by the vocational rehabilitation specialist in coordination with the examiner to determine if an available job is appropriate for that worker. Approval and disapproval of proposed jobs for an injured worker shall be forwarded by the examiner to the treating physician.

E. The vocational rehabilitation counselor shall provide a functional job description quantifying the physical demands of the injured worker's job or proposed alternative employment in terms of postures, functional activities, forces, weights, repetitions, frequency, distances, durations, time frames, and other necessary information concerning physical activity and tasks. If a functional job description is not available for an injured worker's job or proposed position at the time of testing, the examiner may be requested to perform a job assessment and write a functional job description if the examiner has the appropriate training to perform such job assessment.

* * *

§1377. Workers' Compensation Second Injury Fund

A. There is hereby created and established in the state treasury a special fund which shall be designated as the "Workers' Compensation Second Injury Fund", hereinafter referred to as the "fund". The fund shall be maintained as a separate

1 account in the state treasury for the purposes of funding the administrative expenses
2 of the board and reimbursing compensable claims of property and casualty insurers,
3 self-insured employers, and group self-insurance funds as set forth by R.S. 23:1371
4 et seq. Except as provided in ~~Subsection~~ Subsections F and G of this Section,
5 monies shall be withdrawn therefrom only pursuant to legislative appropriation and
6 shall be subject to budgetary control as provided by law. All remaining and
7 unencumbered balances at the end of any fiscal year shall remain credited to the fund
8 and shall be used solely for the purposes stated in this Section. Any interest income
9 generated by the fund shall accrue to the fund.

10 * * *

11 G. The Second Injury Board may approve an annual lump sum amount up
12 to one percent of the board's annual budget to be allocated to Louisiana
13 Rehabilitation Services for use in assisting potential employers and qualified
14 employees with permanent partial disabilities under the Louisiana Rehabilitation
15 Services Vocational Rehabilitation Program. Services may include work evaluation
16 and job readiness services, assessment for and provision of assistive technology, and
17 work station modification directly related to the employment, reemployment, or
18 retention of such employees. The funds paid by the Second Injury Board, as well as
19 any fund matching and earned interest shall only be used for these purposes. The
20 Louisiana Rehabilitation Services shall provide the Second Injury Board with a
21 quarterly report to include funding balances and expenditures as well as case
22 statistical information.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Ponti

HB No. 502

Abstract: Provides for testing and early recognition of the need for vocational training in workers' compensation claims and authorizes the Second Injury Board to allocate funds to assist employers and employees with disabilities.

Present law provides for rehabilitation of injured employees.

Present law requires that vocational rehabilitation services shall be provided by a licensed professional vocational rehabilitation counselor.

Proposed law retains present law and further provides that early referral is critical and that vocational rehabilitation shall begin as soon as possible.

Present law provides that the goal of rehabilitation is to return to work as quickly as possible, in the same position, a modified position, to a related occupation, receive job training, or become self-employed.

Proposed law changes the frequency of short-term training from less than 26 weeks to less than 52 weeks.

Proposed law changes the frequency range of long term training from between 26 weeks and a year, to at least 52 weeks, but not more than a year.

Present law requires employers to select a licensed professional vocational rehabilitation counselor to evaluate and assist the employee in job placement and training.

Proposed law retains present law and further provides that it is the responsibility of the counselor to meet with the employee as soon as possible and develop a rehabilitation plan.

Present law provides that a workers' compensation judge shall determine if, after training, the injured worker could be rehabilitated enough to obtain employment.

Proposed law retains present law and further provides that the employer or insurer shall pay for training if the judge determines that it is appropriate.

Proposed law defines "functional capacity evaluation" to mean a detailed evaluation performed by a qualified examiner to objectively measure an injured worker's level of function within the context of the demands of competitive employment.

Proposed law provides that measures of function from a functional capacity evaluation shall be used to determine an injured worker's ability to safely return to employment, with or without modification.

Proposed law provides for qualifications of functional capacity evaluation counselors.

Proposed law outlines the procedure that the functional capacity evaluation counselor shall use to evaluate the injured worker, and the criteria upon which the worker shall be evaluated and tested.

Proposed law provides that the testing shall take place in two consecutive days, with extensions for certain circumstances.

Proposed law requires that when the injured employee returns to work, the functional job description must be supplied before the evaluation is formed.

Proposed law does not limit the ability to return to work early.

Proposed law provides that the examiner shall forward the report to the physician, and provides that the physician shall approve the report within 15 days, or the recommendations of the examiner are presumed accurate without the physicians input.

Present law creates the Workers' Compensation Second Injury Fund to fund the administrative expenses of the Second Injury Board and to reimburse compensable claims of property and casualty insurers, self-insured employers, and group self-insurance funds.

Proposed law provides that the Second Injury Board may approve funds to be allocated to the Louisiana Rehabilitation Services to assist potential employers and qualified employees with disabilities.

Proposed law requires the Louisiana Rehabilitation Services to provide a quarterly report to the Second Injury Fund Board.

(Amends R.S. 23:1226(A), (B), (D), and (E) and 1377(A); Adds R.S. 23:1227 and 1377(G))